

Introduced by Senator Vidak

February 18, 2016

An act to amend Section 9002 of, and to add Chapter 5.5 (commencing with Section 9069.10) to Part 4 of Division 8 of, the Health and Safety Code, relating to cemeteries.

LEGISLATIVE COUNSEL'S DIGEST

SB 1179, as introduced, Vidak. Public cemetery districts: interment rights.

Existing law, the Public Cemetery District Law, specifies the procedures for the formation of public cemetery districts, procedures for the selection of the district board of trustees and officers, and the powers and duties of the board. Existing law authorizes a public cemetery district to sell "interment rights", defined as the right to use or control the use of a plot, niche, or other space in a public cemetery district for interment of human remains. Existing law provides for the succession of an interment plot in a private cemetery.

This bill would expand the definition of "interment rights" to specify that those rights are a form of personal property rights held by the owner to determine, among other things, the number and identity of any person or persons to be interred in the plot, niche, crypt, or other space for the interment of human remains within a public cemetery. The bill would require the owner of an interment right, at the time of purchase, to designate a successor owner or owners in a signed writing deposited with the cemetery district, as specified. The bill would provide the order of succession that would apply, if the owner dies without making that written designation or a valid and enforceable disposition of the interment right in a testamentary device.

The bill also would provide the circumstances and process under which human remains may be disinterred, reinterred, or removed from a public cemetery district after interment, and would specify the records required to be maintained by the public cemetery district and the person removing and relocating the human remains. The bill would require a person who purports to be the successor owner of an interment right to execute a written statement, under penalty of perjury, that includes specified information regarding his or her claim of successorship, and would provide that a district or district employee or trustee are not liable for claims, losses, or damages resulting from transferring an interment right in reliance on that statement, except as provided.

By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 9002 of the Health and Safety Code is
2 amended to read:
3 9002. The definitions in Chapter 1 (commencing with Section
4 7000) of Part 1 of Division 7 apply to this part. Further, as used
5 in this part, the following terms have the following meanings:
6 (a) “Active militia” means the active militia as defined by
7 Section 120 of the Military and Veterans Code.
8 (b) “Armed services” means the armed services as defined by
9 Section 18540 of the Government Code.
10 (c) “Board of trustees” means the legislative body of a district.
11 (d) “District” means a public cemetery district created pursuant
12 to this part or any of its statutory predecessors.
13 (e) “Domestic partner” means two adults who have chosen to
14 share one another’s lives in an intimate and committed relationship
15 of mutual caring, and are qualified and registered with the Secretary
16 of State as domestic partners in accordance with Division 2.5 of
17 the Family Code.

(f) “Family member” means any spouse, by marriage or otherwise, domestic partner, child or stepchild, by natural birth or adoption, parent, brother, sister, half-brother, half-sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or any person denoted by the prefix “grand” or “great,” or the spouse of any of these persons.

(g) “Firefighter” means a firefighter as defined by Section 1797.182.

(h) (1) “Interment right” means ~~the right~~ *rights held by the owner to use or control the use of a plot, niche, crypt, or other space, authorized by this part, for the interment of human remains, including both of the following rights:*

(A) *To determine the number and identity of any person or persons to be interred in the plot, niche, crypt, or other space for the interment of human remains within a cemetery in conformance with all applicable regulations adopted by the cemetery district.*

(B) *To control the placement, design, wording, and removal of memorial markers in compliance with all applicable regulations adopted by the cemetery district.*

(2) *An interment right is a form of personal property, and is governed by Chapter 5.5 (commencing with Section 9069.10).*

(i) “Nonresident” means a person who does not reside within a district or does not pay property taxes on property located in a district.

(j) “Peace officer” means a peace officer as defined by Section 830 of the Penal Code.

(k) “Principal county” means the county having all or the greater portion of the entire assessed value, as shown on the last equalized assessment roll of the county or counties, of all taxable property within a district.

(l) “Voter” means a voter as defined by Section 359 of the Elections Code.

SEC. 2. Chapter 5.5 (commencing with Section 9069.10) is added to Part 4 of Division 8 of the Health and Safety Code, to read:

CHAPTER 5.5. INTERMENT RIGHTS

9069.10. An interment right does not include the right for disinterment of human remains except on consent of the cemetery

1 district and the written consent of the surviving spouse, child,
2 parent, or sibling, in that order of priority.

3 9069.15. (a) This chapter does not apply to, or prohibit, the
4 removal of remains from one plot to another in the same cemetery
5 or the removal of remains by a cemetery district upon the written
6 order of any of the following:

7 (1) The superior court of the county in which the cemetery is
8 located.

9 (2) The coroner having jurisdiction of the location of the
10 cemetery.

11 (3) The health department having jurisdiction of the cemetery.

12 (b) The cemetery district shall maintain a duplicate copy of an
13 order pursuant to subdivision (a).

14 (c) The cemetery district shall retain a true and correct record
15 of a removal of remains pursuant to subdivision (a) that includes
16 all of the following:

17 (1) The date the remains were removed.

18 (2) The name and the age at death of the person whose remains
19 were removed if available.

20 (3) The cemetery and plot from which the remains were
21 removed.

22 (4) (A) If the removed remains are reinterred, the plot number,
23 cemetery name, and location to which the remains were reinterred.

24 (B) If the removed remains are disposed of other than by being
25 reinterred, a record of the alternate disposition.

26 (d) The person making the removal shall deliver to the cemetery
27 district operating the cemetery from which the remains were
28 removed a true, full, and complete copy of the record containing
29 all of the information specified in subdivision (c).

30 9069.20. (a) An interment right is the sole and separate
31 property of the person listed as the owner in the records of the
32 cemetery district, subject to any written declaration to the contrary
33 signed by the owner and deposited with the cemetery district, or
34 pursuant to a valid trust, or as directed by a superior court of
35 competent jurisdiction in a probate proceeding.

36 (b) The owner of record of an interment right may designate in
37 writing the person or persons, other than the owner of record, who
38 may be interred in the plot, niche, or mausoleum to which the
39 owner holds the interment right.

1 (c) The owner of an interment right shall, at the time of purchase,
2 designate a successor owner or owners of the interment right in a
3 signed writing deposited with the district if those successors are
4 qualified by this part to own interment rights in the district.

5 (d) Use of an interment right transferred from the owner to a
6 successor pursuant to subdivision (c) shall be made in compliance
7 with applicable provisions of state and local law, and of applicable
8 requirements or policies established by the district board of trustees.

9 9069.25. (a) If the owner of an interment right dies without
10 making a valid and enforceable disposition of the interment right
11 in a testamentary device, or by a written designation pursuant to
12 subdivision (c) of Section 9069.20, the successor to the interment
13 right shall be determined pursuant to subdivision (b) or as directed
14 by a superior court of competent jurisdiction in a probate
15 proceeding.

16 (b) The priority order of succession is as follows:

17 (1) First, to a surviving spouse or registered domestic partner.

18 (2) To either of the following:

19 (A) A sole surviving competent adult child.

20 (B) If there is more than one competent adult child, the majority
21 of the surviving competent adult children. However, less than the
22 majority of the surviving competent adult children shall be vested
23 with the rights and duties of this section if they have used
24 reasonable effort to notify all other surviving competent adult
25 children of their instructions and are not aware of any opposition
26 to those instructions by any surviving competent adult children.

27 (3) To the surviving competent parent or parents of the owner.
28 If one surviving competent parent is absent, the remaining
29 competent parent shall be vested with the rights and duties pursuant
30 to this section after reasonable efforts have been unsuccessful in
31 locating the absent surviving competent parent.

32 (4) Either of the following:

33 (A) To the sole surviving competent adult sibling of the owner.

34 (B) If there is more than one surviving competent adult sibling,
35 then to the majority of the surviving competent adult siblings.
36 However, less than the majority of competent adult siblings of the
37 owner shall be vested with the rights and duties pursuant to this
38 section if they have used reasonable efforts to notify all other
39 surviving competent adult siblings of their instructions and are not

1 aware of any opposition to those instructions by any surviving
2 competent adult sibling.

3 (5) If no spouse, child, parent, or sibling survives, the interment
4 right may be used in the order of death first, to the spouse of any
5 child of the record owner and second, in the order of death to the
6 next heirs at law of the owner or the spouse of any heir at law.

7 (6) The spouse of any deceased child of the owner.

8 9069.30. For purposes of this chapter, the following definitions
9 apply:

10 (a) “Adult” means an individual who has attained 18 years of
11 age.

12 (b) “Child” means a natural or adopted child.

13 (c) An individual is “competent” if he or she has either not been
14 declared incompetent by a court of law or has been declared
15 competent by a court of law following a declaration of
16 incompetence.

17 9069.35. When a public cemetery district acts to transfer
18 ownership rights or make an interment on the basis of the
19 declaration, given under penalty of perjury pursuant to Section
20 9069.40, the district, and any employee or trustee of the district,
21 shall not be liable for any claims, losses, or damages asserted in
22 any action unless the district had actual knowledge that the facts
23 stated in writing are false.

24 9069.40. A person who purports to be the successor owner of
25 an interment right shall execute a written statement, declaring,
26 under penalty of perjury, all of the following:

27 (a) He or she is the person entitled to succeed to the interment
28 right pursuant to Section 9069.25.

29 (b) He or she has exerted all reasonable efforts to find other
30 persons who may have an equal or higher claim to succeed to the
31 interment right.

32 (c) He or she is unaware, to the best of his or her knowledge,
33 of any opposition challenging his or her right to succeed to the
34 interment right.

35 9069.45. Upon the sale to a person of a plot, niche, crypt, or
36 other space for interment in a cemetery within a district, the district
37 shall notify the purchaser, in writing, of any interment rights, that
38 this chapter governs the succession of ownership of the interment
39 rights, and the district’s duly adopted policies, rules, and

1 regulations governing the use, sale, or other transfer of interment
2 rights.

3 SEC. 3. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

O